

REMARKS

Claims 12 to 21 are pending.

Claims 12 to 16 and 21 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,589,545 to Carpenter Jr. et al. (Carpenter). The Office Action stated that Carpenter disclosed the limitations of the claims.

The rejection of claims 12-16 and 21 under 35 USC § 102(b) based on Carpenter is not well taken. Carpenter does not disclose all the features of the claims.

The Office Action contends that Carpenter discloses (1) an inner float seal; (2) a downwardly extending bowl (central portion of float seal extending across an opening of a container); and (3) an edge seal portion and shoulder seal portion (upper surface of float seal at an annular edge).

Operation of the closure of the present invention is to a substantial degree dependent upon the attachment of the closure to a collapsible container. The Carpenter fails to disclose the aforementioned three features.

During examination, claim language is to be given its broadest reasonable interpretation consistent with the specification. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004); In re Morris, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321 (Fed. Cir. 1989); and In re Yamamoto, 740 F.2d 1569, 1571-72 (Fed. Cir. 1984).

A finding of the presence of the three features in Carpenter is not reasonable for the following reasons:

(1) an inner float seal

The inner float seal as defined in claim 12 must first be able to float. The inner float seal of the claimed invention is provided with a downwardly extending bowl portion that will be contacted by material in the container upon depression of the container. The float seal must therefore be capable of movement relative to the outer cap portion and the neck of the container. This is stated in claim 12 at the end of paragraph b) where it is stated that the “inner float seal attached to the outer cap portion but moveable in relation thereto”.

In contradistinction, the feature (38) in Carpenter is not a float seal because it does not float. It does not move relative to the outer cap portion. The feature identified by reference numeral 38 is not attached to the outer cap. Further, the feature (38) is not moveable in relation to the outer cap in the manner described in claim 12. The movement claimed is clearly a translational movement rather than deformation as the feature (38) undergoes. Thus, any interpretation of feature (38) in Carpenter as being a “float seal” is not a reasonable one because that feature does not have any “floating” functionality whatsoever.

(2) a downwardly extending bowl (central portion of float seal extending across an opening of a container)

Similarly, the contention in the Office Action that the “central portion of the “float seal” (Carpenter feature 38) extending across an opening of a container is a feature equivalent to a downwardly extending bowl is an unreasonable interpretation. Feature (38) of Carpenter is not bowl-like. The purpose of the bowl of the claimed invention is to contact the material in the container prior to the material reaching the top of the neck of the container and overflowing as described in claim 12. The central portion of a float seal extending across an opening of a container, which the Office Action contends is equivalent, cannot perform this function since by the time the material abuts the central portion, it is

already above the level of the opening and would simply be forced out between the “seal” and the neck of the container. Carpenter simply does not have a feature that is equivalent in function nor has a feature that meets the definition of a “downwardly extending bowl portion”.

(3) edge seal portion and shoulder seal portion (upper surface of float seal at an annular edge)

It is clear from claim 12 that the edge seal and the shoulder seal operate because of the movement available to the inner float seal. In order to function as claimed, when in the sealed condition, the shoulder seal is sealed against the opening and the edge seal is sealed against the outer cap portion. It is clear that this function cannot be achieved by the device in Carpenter.

For example, Figure 1 of Carpenter illustrates the sealed condition. If the edge seal is the upper surface of the “float seal” in Carpenter and the shoulder seal is the lower surface as the Office Action contends, then Figure 1 illustrates the shoulder seal sealing against the opening of the container but the edge seal is free of the outer cap as is illustrated by the clearance between item 40 in Figure 1 of Carpenter and the outer cap. The clearance between the item 40 and the outer cap is needed by the device in Carpenter to allow that device to function as intended, but then is not the same as the features of the claimed invention. The feature the Office Action contends is the edge seal is actually spaced from the outer cap while claim 12 requires that it be sealed.

Therefore, it is clear that the Carpenter device does not have the same set of features as those defined in claim 12. Further, if the Carpenter device were subjected to use according to claim 12, when the container is collapsed, the material would be forced upward causing deformation of the liner as illustrated in Figure 2 and then would escape

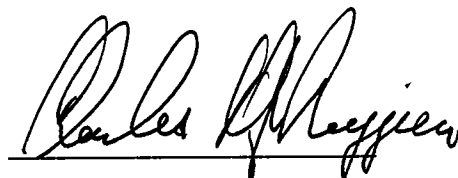
through the vent holes 30. Therefore, the cap taught in Carpenter does not have the same features or functionality as the closure of the claimed invention.

Claims 17 to 20 have been rejected under 35 U.S.C. 103(a) as being obvious over Carpenter in view of U.S. Patent No. 4,392,579 to Uhlig et al. (Uhlig). The Office Action stated that it would have been obvious to modify Carpenter as described in Uhlig for the purpose of facilitating and providing an indicating means.

The rejection of claims 17 to 20 under 35 U.S.C. 103(a) as being obvious over Carpenter in view of Uhlig is not well taken for the reasons set forth above for the rejection under 35 U.S.C. 102(b).

Reconsideration of claims 12 to 21 is deemed warranted in view of the foregoing, and allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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